

IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1860.—Ordered to be printed.

Mr. GREEN made the following

REPORT.

[To accompany Bill S. 245.]

The Committee on the Judiciary, to whom was referred the memorial of Messrs. Sweeny, Rittenhouse, Fant & Co., ask to submit the following report:

On the 17th of December, 1858, a notice was issued by the Treasury Department, over the signature of the Secretary of the Treasury, inviting sealed proposals for ten millions of the five per cent. stock of the United States, that being the balance of the loan authorized by the act of Congress approved June 14, 1858.

It was advertised in said notice that, preliminary to the consideration of any bid by the Secretary, the bidder would be required to deposit one per cent. of the amount of his bid with a depository of the United States, "subject to the order of the Secretary of the Treasury."

The memorialists bid for three millions of dollars' worth of said stock, and deposited \$30,000, according to the requisitions of the notice of the department, with a depository of the United States, of which the Secretary of the Treasury acknowledged to have received the certificate. Their bid for three millions of the stock was accepted at their offer of \$2 89 per cent. premium.

The memorialists allege a violation of the contract by the Secretary of the Treasury, in declining to allow the deposit of the amount of their bid at San Francisco, according to their offer, whereby they aver that they have incurred losses in various ways, and have sustained damage to a large amount. The committee intentionally refrain from entering upon the discussion of a question as to consequential damages, as yet unliquidated, springing from an alleged violation of contract by the United States or any high officer thereof. The Court of Claims is the proper and convenient tribunal for the impartial hearing and adjudication of such a question between the parties and for the adjustment of the damages.

It seems that the memorialists proceeded to pay in their bid, notwithstanding their dispute with the Secretary, and that, prior to the 15th March, 1859, the day when the amount should have been paid in full, they had paid at New York the sum of \$1,550,000, together with

the premium thereon, and stock for that sum was issued to them or their assignees.

They claim that between the 15th March and the 26th of September, 1859, they had paid an additional sum of \$380,000 on the same account, which had been accepted. The Secretary of the Treasury expressly acknowledges to have received at Washington, of this sum, \$280,000, besides premium on the same, and to have issued stock accordingly; and his letter of authority to the depository at Mobile to accept \$100,000 is exhibited, as under date of August 27, 1859. But the committee are informed that this apparent discrepancy disappears, when it is known that the correspondent of the memorialists only deposited \$60,000, instead of \$100,000, making the gross sum (besides premium) paid by them, and for which stock was issued, \$1,890,000. The remaining sum, \$1,110,000, has since been let by the Secretary to other parties, and all the stock authorized by the act of June, 1858, has been taken.

The preliminary deposit made by the memorialists was made in treasury notes, bearing interest at the rate of per cent. per annum to the amount of \$10,000, and \$2,050 22 specie. Of this amount, it appears the sum of \$12,050 22 principal, and \$ interest, remains in the treasury, "on the conditions upon which it was originally deposited by the memorialists." Under the circumstances of the case, as no forfeiture of said deposit could be made under the contract, no penalty being declared, and as the amount does not appear to have been absorbed in payment on the bid, and inasmuch as the remaining stock authorized by the act of Congress has been disposed of to other parties by the Secretary of the Treasury, the committee have concluded that no right exists on the part of the United States to detain the balance of said preliminary deposit; but that the same, though in the depository of the United States, together with the interest which has accrued thereon since the date of the deposit, should be refunded to the memorialists.